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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2021/2022

ULV4612 - LAW OF EVIDENCE I

(All Sections / Groups)

24 November 2021

Reading Time : 2.45pm - 3.00pm (15 Minutes)

Answering Time : 3.00pm - 6.00pm (3 Hours)

INSTRUCTIONS TO STUDENT:

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 4 pages and is divided into 2 parts (**Part A and Part B**). There are 2 questions in Part A and 3 questions in Part B.
3. Students are required to answer only **1 question in Part A (answer either Q1A or Q1B) and answer ALL 3 questions in Part B**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are allowed to bring into the Examination Hall only a **CLEAN** and **ORIGINAL** copy of the:
 - i. EVIDENCE ACT 1950
 - and
 - ii. CRIMINAL PROCEDURE CODE(Students are not allowed to lend or borrow statute(s) during the Examination. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.)
5. Please write all your answers in the Answer Booklet provided.

PART (A)**Answer only 1 question in Part A.****Answer either Question 1(A) or Question 1(B).****QUESTION 1 (A)**

“It is equally important to state that s. 114A in no manner imputes guilt or liability on the part of the "publisher". It merely alters the normal course of proof such that it becomes incumbent upon the presumed publisher to explain why he is not responsible for the content on the Internet portal or site.”

(Per Nallini Pathmanathan FCJ (dissenting) in *Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor* [2021] 3 CLJ 603, FC)

Evaluate the above statement based on the interpretation of section 114A of the Evidence Act 1950.

(Total: 25 marks)

QUESTION 1(B)

“As such, the duty of the court at the end of the defence case and at the conclusion of a trial is to evaluate the totality of all the evidence adduced in the case in determining whether the prosecution has made out a case beyond reasonable doubt against the accused. The duty of the defence, or more accurately what the defence must do to earn an acquittal, is thus not limited to only rebutting the specific *prima facie* findings and the evidence cited in support thereof by the trial judge at the end of the prosecution's case.... the proposition of the defence that it is only required to rebut or explain the *prima facie* findings in order to earn an acquittal, instead of the whole of the prosecution case, is flawed and misconceived. I reiterate that at the conclusion of the trial, the court must evaluate all the evidence before it in order to find whether the prosecution has proven its case beyond reasonable doubt. The emphasis here, again, is the evaluation of all the evidence before it, and not the specific *prima facie* findings of the trial judge as contended by the defence.”

(Per Mohd Nazlan Ghazali J in *PP v Dato' Sri Mohd Najib Hj Abd Razak* [2020] 8 CLJ 319, HC)

Evaluate the above statement based on the duty of the court in a criminal trial at the *prima facie* stage and at the conclusion of a trial.

(Total: 25 marks)

Continued...

PART (B)**Answer all 3 questions in Part (B)****QUESTION 2**

Sun Corp Sdn.Bhd (The Plaintiff) is in the business of supplying cement. Solar Mix Sdn.Bhd (The Defendant), is a manufacturer of ready mixed concrete. The Plaintiff had sold and delivered cement to the Defendant, which then used the cement to produce ready-mixed concrete for sale to its customers. It is undisputed that the Defendant had acknowledged receipt of the cement delivered by the Plaintiff by signing and affixing its rubber stamp on the Delivery Notes. However, the Defendant had, to date, failed to settle the prices of the cement amounting to MYR 5,863,903.91 ("the Outstanding Sum"). The Plaintiff has commenced an action against the Defendant to recover the Outstanding Sum and has filed an application for summary judgment.

The Defendant contends that the quality of the cement supplied by the Plaintiff was not fit for purpose. The Defendant claims that this was brought to the notice of the Plaintiff by a letter dated 3 September 2019. The Defendant further claims that by a letter dated 26 September 2019 the Plaintiff had admitted that the type of cement supplied was not fit for the Defendant's purpose and to rectify the mistake, another delivery would be made. Both the Plaintiff and the Defendant have filed their affidavits with supporting documents enclosed as exhibits. Evaluate the following evidential issues raised by the parties:

a. the Defendant objects to the admissibility of the Plaintiff's affidavit in support on the grounds that the invoices, delivery notes, and debit notes enclosed as exhibits are documents produced by a computer. The Defendant argues that pursuant to section 90A of the Evidence Act 1950, such documents cannot be admitted in evidence unless a certificate under s.90A (2) is adduced. The defendant further contends that these exhibits would contravene the rule against hearsay;

(12½ marks)

b. the Plaintiff objects to the admissibility of their letter dated 26 September 2019 which has been enclosed as an exhibit to the Defendant's affidavit on the grounds that it is a without prejudice communication.

(12½ marks)

(Total: 25 marks)

Continued...

QUESTION 3

Lin and Bob (who are married) have been jointly charged with the murder of Jen pursuant to section 302 of the Penal Code. They are alleged to have committed the offence on 27.6.2017 at house no. 91, Lorong 7, Taman Jaya, Melaka. The prosecution's narrative is that Jen was killed in the course of a robbery by the two accused. Jen had engaged Lin's services to clean her house weekly since 2016. Prosecution alleges that on 27.6.2017, Lin had allowed Bob to enter the house with her in order to commit the robbery. Jen was found lying unconscious in the bedroom with her arms and legs tied when her husband returned home at about 7.30pm. Her mouth was gagged tightly with black cellophane tape. Jen was rushed to the hospital, given emergency treatment but died without gaining consciousness at about 11.00pm that same day. During trial the following evidence was tendered by the prosecution:

- i. CCTV recordings from Jen's house which clearly shows Lin and a man entering the house at 2.30pm on 27.6.2017. There was also clear footage showing the motorcycle used by the 2 accused (Registration Number: MCP 1010). The CCTV recordings also showed Jen and the man removing several items from the house and loading it on the motorcycle. The same motorcycle was found parked in front of the home occupied by the 2 accused at the time of their arrest;
- ii. that several items belonging to the victim were found by police in the home occupied by the 2 accused in Batu Pahat when it was searched following their arrest. The items found include: A Samsung telephone (P64), Asus telephone (P65) and a gold colour wrist watch Rado brand (P66). All these items were identified by Jen's husband as items belonging to the victim and were consistent with the items listed as missing in his police report;
- iii. that IO of case, Inspector Musa who carried out the investigation of the crime, had received information from Bob during his interrogation, that he is able to show where some of the looted items belonging to the victim was thrown away. On 15.7.2017, Bob led the IO and his team of officers to an abandoned construction site in Alor Gajah. At the construction site Bob had pointed to a slab of concrete and gestured to look behind. Behind the concrete slab the police team found identification documents belonging to the victim and the CCTV decoder from the victim's home which had been removed in the course of the crime.

Analyse the following issues:

- a. the relevancy of the evidence tendered by the prosecution;

(15 marks)

- b. the admissibility of Inspector Musa's testimony on the information received from Bob which led to the discovery of the identification documents belonging to the victim and the CCTV decoder. The Defence has objected to this evidence.

(10 marks)

(Total: 25 marks)

Continued...

QUESTION 4

Baik, while driving his car was stopped by the police. Upon a body search conducted on him a packet containing white powdery substance was found in the back pocket of the pants he was wearing. The police then proceeded to conduct a thorough search on the car that he was driving. The police found three other packets containing the same white powdery substance hidden in special compartments behind the instrument panel and the speakers.

Baik admitted to the Inspector Ragu who was leading the party that he was the registered owner of the car and the drugs in his back pocket was for personal use. He kept silent when asked by the police if other drugs stashed away in the car also belonged to him. Not satisfied with Baik's silence, Inspector Ragu had said to him in a threatening manner, "If you cooperate with us I will make sure that you get a lenient sentence, if not we will make sure you, your wife and children will suffer the consequences". After a few hours of incessant questioning Baik relented and said "Okay, I will cooperate. I hid the stuff behind the instrument panel and inside the radio speakers."

During the remand period, Baik gave a statement to the recording officer denying that the three packets found in the car belonged to him.

At trial, Baik who was unrepresented, admitted to the first charge of possession of 0.3g of heroin which was found in his back pocket of the pants he was wearing, but claimed trial to the other charge under s.12 Dangerous Drugs Act 1952 of possession of 1.5g of heroin found hidden in his car.

The Prosecution tendered Baik's statement made to Inspector Ragu admitting that the drugs found hidden in the car belonged to him. The prosecution also relied on the presumptions under s.37(d) & s.37(h) of the Dangerous Drugs Act 1952 during trial. At the end of the prosecution case, the magistrate was of the opinion there were evidence which were not inherently incredible against Baik and ordered Baik to enter his defence. At the conclusion of trial, Baik was found guilty and convicted. Baik wishes to appeal against his conviction under s.12 Dangerous Drugs Act 1952 of possession of 1.5g of heroin found hidden in his car.

Analyse Baik's potential grounds of appeal.

(Total: 25 marks)

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